

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT S. CHENVERT,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 03-0330-SLR
)	
THE PAUL REVERE LIFE)	
INSURANCE COMPANY,)	
)	
Defendant.)	

James P. Hall, Esquire of Phillips, Goldman & Spence, P.A.,
Wilmington, Delaware. Attorney for Plaintiff.

William L. Doerler, Esquire of White and Williams, LLP,
Wilmington, Delaware. Attorney for Defendant.

MEMORANDUM OPINION

Dated: August 2, 2004
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

On March 28, 2002, plaintiff Robert S. Chenvert ("Chenvert") filed this breach of contract action in Delaware Superior Court alleging that defendant The Paul Revere Life Insurance Company ("Paul Revere") breached the terms of an insurance policy held by Chenvert.¹ (D.I. 1) Chenvert sought damages in excess of \$75,000. (D.I. 26, Ex. A) On March 27, 2003, Paul Revere removed the case to this court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.² (D.I. 1) After a teleconference on June 25, 2003, the court entered a scheduling order, setting discovery and motions deadlines. (D.I. 5)

On December 10, 2003, the court granted the parties' request to vacate the scheduling order and to limit the scope of discovery to the issue of defining the phrase "in the operation of [y]our business or profession" in the "Covered Monthly Expense" provision of the Business Overhead Expense policy between Chenvert and Paul Revere. (D.I. 18) On December 15, 2003, Paul Revere moved for summary judgment. (D.I. 22)

¹On February 26, 2003, the Superior Court of Delaware granted summary judgment in favor of co-defendant Unum Provident Corporation. (D.I. 1, Ex. 3) A bad faith claim was dismissed from the complaint on November 5, 2003. (D.I. 15)

²Chenvert is a resident of Delaware and Paul Revere is incorporated under the laws of Massachusetts. More than \$75,000 is alleged to be at stake. (D.I. 1)

Chenvert responded, the next day, with a cross-motion for partial summary judgment. The court has jurisdiction pursuant to 28 U.S.C. § 1332. For the reasons that follow, Paul Revere's motion for summary judgment is granted and Chenvert's motion for summary judgment is denied.

II. BACKGROUND

Chenvert is a dentist who maintained a dental practice in Nantucket, Massachusetts from approximately September 1997 to May 2000. (D.I. 26) The business was organized as a sole proprietorship. (Id. at A0003) In 1987, Chenvert purchased two disability insurance policies, a Disability Income policy ("DI" policy) and a Business Overhead Expense policy ("BOE" policy), that would provide benefits upon his injury or illness. (D.I. 26, Ex. B) The BOE policy provided coverage in an amount not to exceed \$9,300 for a total of 15 months. (D.I. 1) The contracts were executed in Massachusetts. (Id.)

In May 2000, Chenvert was placed on disability due to severe clinical depression. (D.I. 1, Ex. 1) On June 6, 2000, Chenvert stopped working, notified Paul Revere of his disability and filed a claim for payment of individual disability income and overhead business expenses that had accumulated since he became disabled.³ (D.I. 24, A0001, A0004) Although Chenvert was the only dentist

³Chenvert's treating psychiatrist indicates the diagnosis of depression was made on December 22, 2000. (D.I. 26, Ex. C; D.I. 29)

in his practice, his absence did not immediately close the office. His wife, the officer manager, continued to operate the dental practice's dental hygiene department until the end of July when all aspects of Chenvert's business ceased. (Id. at A0003, A0005- A0006)

Chenvert filed claims for benefits under the BOE policy.⁴ He submitted expenses for reimbursement for periods in July and August, 2000, as well as later.⁵ Paul Revere paid Chenvert \$9,300 in benefits under the BOE policy.⁶ (D.I. 26, fn.1) Paul Revere denied certain claims, based on its determination that the claims were related to expenses incurred after Chenvert ceased operation of his business on July 31, 2000. (D.I. 24 at A0011) In a letter dated August 14, 2000, Paul Revere wrote, in part, to Chenvert:

We wish to remind you that your BOE policy reimburses those fixed, monthly expenses incurred that are ordinary and necessary in the operation of your business. It is our understanding that your practice closed at the end of July 2000. As discussed with your wife, we understand that there may be a few

⁴Chenvert has and continues to receive disability income benefits under the DI policy issued by Paul Revere. (D.I. 24, A0001)

⁵Chenvert's schedule of expenses submitted for reimbursement were as follows: 7/6/00 to 8/6/00: \$11,134.42; 8/6/00 to 9/6/00: \$10,685.04; and for various dates through 8/31/00: \$339.83. (D.I. 26 at A0008 - A0010)

⁶Paul Revere maintains that only \$8,659.28 of the expenses submitted were covered under the policy, resulting in an overpayment of \$640.72.

months following the closing of a business in which "winding down" expenses are incurred. Therefore, it appears that any liability under this claim will be for a limited benefit period.

(Id. at A0006) Subsequently, Chenvert instituted this action.

III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63

F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

III. DISCUSSION

A. Choice of Law

A federal district court sitting in diversity must apply the choice of law rules of the state in which it sits to determine which state's law governs the controversy before it.⁷ Day & Zimmermann, Inc. v. Challoner, 423 U.S. 3, 4 (1975); Hionis Int'l Enter., Inc. v. Tandy Corp., 867 F. Supp. 268, 271 (D. Del. 1994). Under the State of Delaware's choice of law rules, the court applies the most significant relationship test to resolve conflicts issues arising out of the interpretation and validity of contracts. Travelers Indem. Co. v. Lake, 594 A.2d 38, 41 (Del. 1991); Dolan v. Mutual Reserve Fund Life Association, 53

⁷Neither party present a choice of law analysis. Instead, both agree, without discussion, that Massachusetts law governs. (D.I. 8, n.2; D.I. 26, n.2)

N.E. 398, 399 (Mass. 1899).

The contract at bar was signed in Massachusetts. Chenvert operated his practice in Massachusetts and Paul Revere is incorporated there. The most significant relationship test mandates that the court apply Massachusetts law.

B. The BOE Policy

Interpretation of contract terms is governed by the contract and the plain meaning of the words used. 116 Commonwealth Condo. Trust v. Aetna Casualty & Surety Co., 742 N.E.2d 76, 78 (Mass. 2001). An insurance contract is "construed according to the fair and reasonable meaning of the words." Fitzgerald v. John Hewitt & Associates, 2002 WL 31677199, *1 (Mass.Supp. 2002). Interpretation of an insurance policy is a question of law for the court. Cody v. Connecticut General Life Ins. Co., 387 Mass. 142, 146 (1982).

Under section 1.18 of the BOE policy, "[c]overed [m]onthly [e]xpense" is defined as "those fixed, monthly expenses incurred in [y]our [o]ccupation that are ordinary and necessary in the operation of [y]our business or profession." Listed as examples are:

- a. Rent
- b. Utilities
- c. Telephone
- d. Employees' wages
- e. Leased equipment
- f. Rental equipment
- g. Office Supplies
- h. Business Liability Insurance premiums

- i. Professional Dues & memberships
- j. Interest on debt
- k. Depreciation or scheduled installment payments of principal of debt.

Listed as examples of non-covered monthly expenses are:

- a. Salary, fees, or other remuneration, including Benefits, for:
 - (1) You; or
 - (2) Any member of Your family unless that person was employed 60 days prior to Your Disability
- b. Cost of Sales or Services
- c. Expenses incurred prior to the Commencement Date
- d. Additions to inventory
- e. Travel and entertainment
- f. Expenses for which You were not periodically liable prior to the start of Disability.

(D.I. 26, Ex. B)

At issue, presently, is the debt accrued by Chenvert to Sky Financial. (D.I. 26, Ex. E, 1) Chenvert obtained a loan from Sky Financial to purchase and operate the dental practice. Outstanding debt on the loan is \$130,000. (D.I. 1) Paul Revere denied payment of the Sky Financial loan based on its interpretation that the loan payments are not expenses incurred that are ordinary and necessary in the operation of Chenvert's business. (D.I. 26, Ex. F)

Both parties agree the language of the policy determines coverage and each argues the language is favorable to their positions. Paul Revere contends that expenses incurred by Chenvert after the date he ceased operating his dental practice are not covered as monthly expenses under the BOE policy because the policy requires that expenses be incurred by the insured in

the operation of his business.

Chenvert asserts that the purpose of the BOE policy was to insure payment of business expenses during any term of disability.⁸ The Sky Financial loan is clearly within the covered expenses, argues Chenvert, because the loan was obtained to purchase and operate the dental practice. The reason for obtaining a disability policy is to ensure payment of expenses during a period of disability regardless of operation of the business. Since Chenvert was a sole practitioner, when he became totally disabled it was not possible for him to continue to operate the business. Chenvert argues that Paul Revere knew of this situation, accepted his money for premiums but then denied him disability payments. Moreover, Chenvert contends that if the terms of the policy are ambiguous, the section must be construed in his favor. Hakim v. Mass. Ins. Insolvency Fund, 424 Mass. 275, 282 (1997).

The BOE policy expressly includes fixed monthly expenses incurred during a period of total disability in the operation of the insured's business. The language plainly provides coverage for certain expenses incurred while the insured's business is in operation. The key word is "operation", meaning ongoing. When Chenvert ceased operation of the dental practice, he no longer

⁸The described purpose is averred by counsel and not by Chenvert. Absent is any affidavit testimony surrounding the purpose for obtaining the contract or related representations.

incurred expenses covered under the policy. See generally, Wilson v. Monarch Life Ins. Co., 971 F.2d 312, 313 (9th Cir. 1992); Paul Revere Life Insurance Co. v. Klock, 169 So. 2d 493, 495 (Fla. Dist. Ct. App. 1964); Principal Mutual Life Ins. v. Toranto, 1997 WL 279751 (N.D. Tex. 1997). All expenses that were incurred after the date on which Chenvert stopped operating his dental practice are not covered under the BOE policy.⁹

IV. CONCLUSION

For the reasons stated, defendant's motion for summary judgment is granted and plaintiff's motion for summary judgment is denied. An appropriate order shall issue.

⁹Having resolved this issue, it is unnecessary to determine whether the Sky Financial loan is covered as a monthly expense.

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)	
THE PAUL REVERE LIFE)	
INSURANCE COMPANY,)	
)	
Defendant.)	

O R D E R

At Wilmington this 2nd day of August, 2004,
consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendant's motion for summary judgment (D.I. 22)
is granted.
2. Plaintiff's motion for partial summary judgment
(D.I. 25) is denied.
3. The Clerk of Court is directed to enter judgment
for defendant and against plaintiff.

Sue L. Robinson
United States District Judge